COMMENTS OF THE LOW-INCOME ENERGY AFFORDABILITY NETWORK
ARREARAGE MANAGEMENT PROGRAMS
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DTE 05-86

I. INTRODUCTION

These are the comments of the Low-Income Energy Affordability Network (LEAN) on behalf of itself and its constituent member agencies that deliver "low-income weatherization and fuel assistance" services, St. 2005, c.140, § 17(a); G.L. c. 25, § 19. Among many other efforts to improve the lives of their low-income clients, as well as to improve their clients' ability to pay utility bills, the agencies implement the utility efficiency programs in Massachusetts, the weatherization and fuel assistance programs of the Massachusetts Department of Housing and Community Development (DHCD), and arrearage management programs already adopted by certain Massachusetts utilities.[1]

We are grateful to the General Court, to the utilities that have developed programs, and to this Department for developing the ideas and principles of arrearage management so quickly and effectively. As was so clearly evidenced at the public hearing in this case, arrearage management for utility bills could not be coming at a more opportune moment.

II. PRINCIPLES

Our analysis of the filings in this docket is guided by these principles, drawn from statute:

1. "An arrearage management program shall include a plan under which companies work with eligible low-income customers to establish affordable payment plans…" St. 2005, c. 140, §17(a).

A permanent plan, open to all eligible low-income customers, is thus required.[2] Among other things, as detailed further in § IV below, it is essential that the general prohibition against payment plans with down payments in excess of 25% (c. 140, § 17(b)) not be conflated with arrearage management program requirements. There should thus be no *requirement* of an unaffordable down payment as a condition of participating in an arrearage management plan. In addition, arrearage credits need to be sufficient to make possible an affordable payment plan. Finally, a customer's failure to make a timely payment should be considered as evidence that the payment plan may not be truly affordable and that the company should discuss renegotiation of the original terms. In order to facilitate such renegotiations, and other possible issues, it is important that each utility designate a consistent point of contact for customers (and their agents) under this program. At a further level of detail, LEAN also submits that successful arrearage

[1] Agreements to operate arrearage management programs were reached with the following utilities prior to the enactment of St. 2005, c. 140: Bay State Gas Co.(pilot), KeySpan (partial), NSTAR Electric and Gas, Unitil/Fitchburg G&E, and Western Massachusetts Electric Co.

[2] LEAN understands the usefulness of ramp-up periods for new programs such as those involved here. However, we also point out how important it is that all arrearage management programs are fully functioning before the winter moratorium ends on May 1, 2006 so that there will be no interruption in utility service for eligible customers.

management programs need periodic arrearage credits, preferably monthly, to reward desired consumer payment behavior.[3]

2. Arrearage management programs must be filed "including a plan to coordinate the arrearage management plan with the low-income weatherization and fuel assistance agencies and services." St. 2005, c. 140, § 17(a).

As further described in § III below, LEAN has already negotiated program designs with many utilities and is in continuing discussions with the others.

3. The Department maintains general supervision over the propriety of all utility rates. G.L. c. 164, § 94. LEAN agrees that there should be complete cost recovery for all net costs of arrearage management programs. Two of the filings referred to in this docket contain agreements with LEAN, approved by the Department, that summarize this principle with requisite detail but admirable simplicity and conciseness:

> The goal is to have the AFP program self-funding by re-establishing customers that would otherwise not pay. Cost recovery will be provided to the extent that the goal is not met based on the evaluation described in this paragraph. The AFP Program evaluation will net program costs from program benefits in such a way as to avoid double counting or excluding any cost or benefits. Costs are all administrative costs and customer arrearage credits less a statistical estimation of the arrearages from program participants that would have been uncollected in absence of the program. Benefits are the reduction in Company arrearage costs including collections cost, shut-off costs, cost of money, and additions to revenue that are attributable to the program. The AFP evaluation will produce a negative result, a zero result or a positive result. When the result of the AFP evaluation is positive, producing a debt to the Company, the net costs of the NSTAR AFP in excess of the benefits will be deferred with carrying costs, reconciled and recovered annually through the Company's Residential Assistance Adjustment Factors approved by the Department in D.T.E.01-106-C/05-55.

Exh. NSTAR-23 in D.T.E. 05-85.

> The costs of such expansion in excess of the benefits will be deferred with carrying costs and recovered over an appropriate period as will be determined in WMECO's next general distribution rate case. To the extent that information is available, benefits analysis may include increased customer payments and third-party payments; decreased site visits; terminations of service and reconnections; decreased collection costs, such as notices, call, and administrative costs; and decreased costs of money and uncollectibles. WMECO will track at least a representative sample of individual customer records in order to provide a basis for its estimates of costs and benefits, including historical comparative data, and will provide this information no less frequently than semi-annually to the Parties.

[3] "An arrearage management program shall … provide credits to those customers toward the accumulated arrears where such customers comply with the terms of the program." St. 2005, c. 140, § 17(a).

Settlement Article VIII in D.T.E. 04-106.[4]

We are hopeful that the costs of the program will be wholly or largely offset by such benefits as reduced collection costs, including through reduced shut-offs, and increased revenue. It will be important to develop reasonable measurement methods to determine the extent to which this goal is reached. As appropriate, similarly to utility efficiency programs, evaluation can then be used both to support cost recovery and to inform program adjustments.

III. APPLICATION OF PRINCIPLES TO SPECIFIC FILINGS

LEAN has been in touch with and is negotiating program details with every utility in the Commonwealth.[5] The identity and number of issues varies by utility, but there are no issues other than those described above. We are optimistic about the prospects for settlement. Although in most instances there was not sufficient time to provide the Department with settlements in time for these comments,[6] we are optimistic that we can do so in time for incorporation in the Department's February 28 order.

However, we are concerned with some of the elements of one particular filing, that of New England Gas Company. The Company is willing to refine its filing to reflect statutorily required coordination with the low-income network, including, for example, notice to the agencies of missed payments. However, the company appears to be unwilling to drop its 25% down payment requirement or to increase its $150 arrears credit, making statutorily-required affordable payment plans extremely unlikely. The Company also appears unwilling to provide arrears credits on a periodic basis in order to reward payment. The filing is silent about evaluation, other than to demand recovery for undefined "lost revenues," but the Company has indicated its willingness to work with the agencies to develop an evaluation plan.

It is important to acknowledge that arrearage management programs are experimental at this stage. Only by operating programs will we learn what works and what does not, or how much agency service is needed to make the program successful. We expect that such lessons will be principally reflected in adjustments to the ongoing agreements (including program support) between each utility and the agencies, with reports as appropriate to the Department. LEAN commits itself to maintaining the open lines of communication that will make this possible.

[4] LEAN supports more timely recovery via the Residential Assistance Adjustment Factors approved by the Department in D.T.E.01-106-C.

[5] There are currently no outstanding issues with Western Massachusetts Electric Co. In some cases (NSTAR, Unitil), the only outstanding issues are identifying detailed agency activities and program support therefor.

[6] As noted in the filings, relevant settlements with LEAN have been filed by National Grid, NSTAR Electric and Gas, Unitil/Fitchburg G&E, and Western Massachusetts Electric Co. In addition, an agreement for a pilot program was filed by Bay State Gas. In almost all these cases, there remain programmatic issues to be resolved. However, we are optimistic that this will present no obstacle to the successful operation of the programs.

IV. DOWN PAYMENTS OF PRE-DETERMINED AMOUNTS HOULD NOT BE REQUIRED

Section 17 of Chapter 140 ("§ 17") requires affordable arrearage management payment plans and does not require any down payment in connection therewith. Section 17 contains two separately-lettered paragraphs, "(a)" and "(b)," that impose quite distinct requirements on utility companies. Section 17, para. (a) ("¶ a") requires, *inter alia*, that companies file "arrearage management programs" ("AMPs") as that term is defined therein. Companies are required first to devise AMPs broadly available to eligible low-income customers, and then to enroll individual customers onto their AMPs after the Department's review and approval of the program design.

Section 17, para. (b) ("¶ b"), makes no reference to the new arrearage management requirement. Rather ¶ b ,*inter alia*, sets a <u>minimum</u> period of four months on the payment plans that companies have been required to offer for decades, for payment plans entered into with low-income customers. The section also clarifies that to comply with this minimum four-month payment plan provision, a company cannot require more than 25% of the arrearage as the first or initial payment; and allows customers and companies to freely enter into <u>longer</u> payment plans without any involvement or intervention by the Department. It explicitly prohibits the companies from seeking payment plans of <u>less</u> than four months from low-income customers without the approval of the Department and requires the company to give notice to the customer if the company seeks the Department's approval. Section 17, ¶ b also preserves the right of the Department to order a company to accept a payment plan longer than four months, either on an individual, case-by-case basis or by revising its regulations. Unlike ¶ a, ¶ b does not mandate any filings by companies nor does it require companies to design any new programs. Rather, ¶ b clarifies the parameters of the payment plans that companies have been offering under the Department's long-standing payment plan regulations, 220 C.M.R. 25.01 (definition of "payment plan"), 25.02(6).

In passing ¶ b the legislature was responding to uncertainty around interpretation of the payment plan regulations. In particular, the Department is aware that questions had arisen during 2005 as to whether a company was prohibited from asking a customer to put down more than 25% of an overdue amount in order to establish a "payment plan" as defined under 25.01. That definition reads (emphasis added):

> Payment plan, a deferred payment arrangement applied to an amount of past due charges. **Said arrangement shall extend over a minimum of four months**, or such other period approved by the Department's Consumer Division, whereby **equal payments** of said past due charges in addition to currently due charges are billed to the customer.

Consumer advocates, including the National Consumer Law Center, interpreted the highlighted language to prohibit a company from requiring more than 25% of the arrearage as the initial payment because an initial payment of more than 25% would result in <u>un</u>equal payments, or payment plans of less than four months, or both. Companies took the position that they could require 50% or even more of the arrearage as the initial payment, so long as repayment of the remaining balance (after payment of 50% or more of the arrearage) was spread

over four or more months and divided into equal monthly payments. With passage of ¶ b, companies are clearly prohibited from asking for more than 25% of the arrearage from a low-income customer and prohibited from seeking a payment plan of less than four months without the explicit approval of the Department. However, ¶ b also makes it clear that companies have complete discretion to enter into payment plans of longer than four months without any involvement of the Department.

While ¶ a and ¶ b thus address very different circumstances and impose distinct obligations on companies, some companies have confused the requirements of the two paragraphs. This is understandable, given that Chapter 140 was signed less than two months ago and companies were given short notice to file their AMPs, but this underscores the importance of the Department clarifying how these two paragraphs will be implemented.

As just noted, provisions in the initial filings of several companies reflected some confusion over the relationship of ¶ a and ¶ b. However, virtually all companies, after consultations with the Low-income Energy Affordability Network,[7] have revised or are in the process of revising their proposals. One company, New England Gas Company ("NEGC"), still apparently intends to include a provision that may result from such confusion and which in any case should be removed. NEGC proposes to require that arrearage management customers make an initial payment of 25% of any arrearage.

It is possible that NEGC included this highlighted provision regarding an initial payment of 25% by conflating the requirements of ¶ a and ¶ b. Whether NEGC's proposal results from confusion over the meaning of these two paragraphs, or from NEGC's conscious intent to design an AMP with a high initial payment, the Department should remove this provision from NEGC's proposal. The purpose of ¶ a, *inter alia*, is to require companies to "work with eligible low-income customers to establish <u>affordable</u> payment plans." Clearly, the legislature intended companies to design AMPs with components that are more flexible and affordable than the bare minimum required by the Department's existing payment plan rules and by ¶ b. Requiring <u>all</u> low-income heating customers who enter the HEAT Credit Program, many of whose arrearages will be quite large, to pay 25% of the arrearage up front is too rigid and too high an obstacle to meet the affordability requirement of ¶ a. The Department should therefore strike this requirement from NEGC's proposal.

V. EVALUATION REQUIRES, AMONG OTHER THINGS, MANDATORY BUT STREAMLINED ARREARAGE REPORTING TO THE DEPARTMENT.

The Department currently collects monthly data pertaining to customer arrearages, service disconnections and service reconnections from jurisdictional natural gas and electric companies. Data points collected under the existing reporting protocol include the following:

1. Number of customers

[7] Section 17, ¶ a requires companies to "coordinate the arrearage management plan with the low-income weatherization and fuel assistance agencies."

2. Dollars billed
3. Average dollars billed
4. Number of customers with arrears less than or equal to 30 days old
5. Dollar value of 30-day arrears
6. Number of customers with arrears less than or equal to 60 days old
7. Dollar value of 60-day arrears
8. Number of customers with arrears less than or equal to 90 days old
9. Dollar value of 90-day arrears
10. Dollar value of accounts written off as uncollectible
11. Number of days of sales outstanding

Companies report each of the data points listed above for numerous customer classes and sub-classes, including the following:

1. General residential
2. Commercial/industrial
3. Residential with a serious illness
4. Residential elderly
5. Residential with an infant in the household
6. Residential with financial hardship
7. Residential receiving fuel assistance

In addition, the existing monthly reporting protocol includes the following data points that apply across customer class lines:

1. Dollar amounts written off as a result of as a result of DTE decisions
2. Number of informal hearings with customers
3. Number of adjudicatory hearings with customers
4. Total residential and commercial/industrial dollars recovered as a result of collection activities
5. Number of residential budget plans in force
6. Number of new payment plans in force
7. Dollar amount protected through payment plans
8. Number of 72-hour disconnection notices mailed
9. Number of residential accounts terminated for non-payment
10. Number of residential accounts restored
11. Average duration of termination for restored residential accounts
12. Number of customers on a low-income discount rate
13. Number of liens filed in court
14. Number of warrants issued
15. Number of warrants executed
16. Number of complaints filed in small claims court
17. Number of cases referred to a collection agency
18. Number of cases filed in any court for tampering, diversion or unmetered usage.

The existing reporting protocol is cumbersome, and LEAN understands that month-to-month reporting by some companies is inconsistent or in some cases, non-existent. Therefore LEAN respectfully requests that the Department (1) replace the existing reporting protocol with one that is simplified and streamlined as recommended below, and (2) order regular monthly reporting by all jurisdictional electric and natural gas companies.

LEAN recommends that the following data points be collected on a monthly basis:

1. Number of accounts
2. Number of accounts unpaid at 75 days after issuance of a bill
3. Dollar value of accounts unpaid at 75 days after issuance of a bill[8]
4. Number of accounts sent a 72-hour disconnection notice
5. Number of service disconnections for non-payment
6. Number of service restorations
7. Number of accounts written off as uncollectible
8. Dollar value of accounts written off as uncollectible

LEAN recommends that the data points listed directly above be reported for the following customer groups:

1. General residential
2. Customers receiving a low-income discount rate
3. Customers participating in an arrearage management program

LEAN submits that the objectives of monthly reporting by jurisdictional companies are to assess the extent to which necessary utility services are available across the population, evaluate the effectiveness of companies' arrearage management programs, inform the design and implementation of other low-income energy programs and policies, and satisfy one of the statutory criteria for permitting the release of LIHEAP Emergency Contingency Funds.[9] A more streamlined reporting system will satisfy those objectives, while relieving some of the reporting burden placed on companies. If necessary and appropriate, LEAN is interested in working with the Department and companies to develop a final reporting protocol that satisfies reporting objectives while minimizing reporting burden. In that connection, a Technical Session would be useful.

VI. CONCLUSION

For all these reasons, we ask the Department to evaluate the filings using the standards set out in sections III and IV and require the arrearage data reporting set out in section V. We will report to the Department as we reach agreement with utilities on these matters.

[8] The number of days past due for this and the previous item should be chosen to be consistent with the previous data format, i.e., consistent with the 30, 60 or 90 day data already filed.

[9] The LIHEAP statute defines "emergency" to include a "significant increase in home energy disconnections reported by a utility, a State regulatory agency, or another agency with necessary data." 42 U.S.C. § 8622(1)(D).

Respectfully submitted,

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